

REMARKS

The Office Action mailed August 29, 2008 has been received and carefully noted. Claims 1-5, 7-22, and 24-32 are currently pending in the subject application and are presently under consideration.

Claims 1, 3-5, 7, 10, 12, 15, 17, 19, 22, and 24 have been amended and claims 6 and 23 have been canceled herein. A listing of claims can be found on pages 2-6 of this Response.

Favorable reconsideration of the pending claims is respectfully requested in view of the amendments and the following comments.

I. Rejection of Claims 4-14 Under 35 U.S.C. §101

Claims 4-14 are rejected under 35 U.S.C. §101. The Examiner states that these claims must be tied to another statutory class of invention, such as a particular apparatus (*See* Office Action mailed August 29, 2008, pg. 7). Independent claim 4 has been amended to tie each of the method acts to a demand projection module, which is a particular apparatus, to resolve this issue. The Applicants respectfully request that the rejection of independent claim 4 (and claims 5-14 which depend therefrom) be withdrawn.

II. Rejection of Claims 1-5, 7, 8, 10-23, 25, 26, and 28-32 Under 35 U.S.C. §102(b)

Claims 1-5, 7, 8, 10-23, 25, 26, and 28-32 are rejected under 35 U.S.C. §102(b) as being anticipated by Landvater (U.S. 6,609,101). It is requested that these rejections be withdrawn for at least the following reason. Landvater does not describe each and every element of the claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). The Applicants note that the Examiner does not believe that the Specification includes “a specific formula or algorithm for calculating the weighting factors or specific details to *how* the weighting factor is ‘calculated’” (*See* Office Action mailed August 29, 2008, pg. 3) (emphasis in

original). The Applicants respectfully disagree. At least paragraph 0038 of the Specification describes in particular terms a formula defining how the weighting factor is calculated. These aspects are referenced in at least claims 1, 4, and 24 and further discussed below.

Amended independent claim 1 recites “a **demand projection module** to calculate a second weighting factor of a second time period **based on** a first weighting factor of a first time period, the first time period preceding the second time period” (emphasis added). As noted by the Examiner, Landvater discloses “user-specified weights” used to combine “the extrapolated sales history with the original promotional forecast” (See Landvater, col. 19, ll. 60-62). However, Landvater does not disclose each and every element of claim 1 for at least the following reasons.

First, Landvater does not disclose the recited demand projection module that calculates weighting factors. Landvater states that the weights are “user-specified” and does not go into further detail regarding how the user arrived at these values. In contrast, claim 1 recites that the calculation of the weighting factor is performed by a “demand projection module” (See independent claim 1). The Examiner states that “it is inherit [*sic*] that the weights [of Landvater] were ‘calculated’” (See Office Action mailed August 29, 2008, pg. 4). The Applicants respectfully disagree. To establish inherency, the descriptive matter must **necessarily** be present in the cited reference.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (The claims were drawn to a disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims.

The court construed the claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.)

See MPEP § 2112(IV) (emphasis in original). It is not **necessarily** the case in Landvater that the “user-specified weights” are calculated **by a demand projection module**. For example, since the only criterion of the “user-specified weights” is that they are specified by a user, it is conceivable that these weights may simply be chosen at random by a user, without the use of any type of module, much less a demand projection module. It is noted that the recited module in the claim is the same module that determines demand. If the Examiner maintains this rejection, the Applicants respectfully request that the Examiner clarify which specific module in Landvater equates to the demand projection module recited in the claims.

Second, Landvater does not disclose the amended aspects of the weighting factor. Since the only information known with respect to calculation of the “user-specified weights” is that they are somehow provided by a user, it cannot be said that Landvater discloses the detailed aspects of weighting factor calculation, namely “calculat[ion of] a second weighting factor of a second time period **based on** a first weighting factor of a first time period, the first time period preceding the second time period” (emphasis added). It is noted that Landvater is silent regarding numerous recited aspects of weighting factor calculation. Not only does the claim recite the second weighting factor of a second time period calculated based on a first weighting factor of a first time period, but that first time period **precedes** the second time period.

In view of the above, Landvater does not disclose “a **demand projection module** to calculate a second weighting factor of a second time period **based on** a first weighting factor of a first time period, the first time period preceding the second time period” (emphasis added) as recited in claim 1.

Amended independent claim 4 recites:

calculating a second weighting factor for a plurality of subdivisions of the time period by the demand projection module, wherein calculating the second weighting factor comprises:
applying a smoothing factor to new demand data to produce a first result;
aggregating the new demand data for the second time period;

applying an inverted smoothing factor to a first weighting factor to generate a second result, the first weighting factor corresponding to a first time period, the first time period preceding the second time period; and
adding the first result and the second result;

(emphasis added). These limitations were transferred from claim 6 (now canceled). The Examiner cites various sporadic pieces of Landvater that allegedly disclose these limitations (*See* Office Action mailed August 29, 2008, pg. 13). The Applicants have reviewed these passages and do not discern how any of these passages would detail the “user-specified weights” that the Examiner equates with the weighting factor recited in the claims. Rather, the cited passages are directed to determining a demand forecast, not a weighting factor (*See e.g.*, Landvater, col. 12, ll. 35-40, smoothing, averaging, and adjusting forecasting information). The “user-specified weights” that the Examiner identified in col. 19, line 60 – col. 20, line 15 are not even mentioned in any of the cited passages that allegedly teach their calculation (*See* Office Action mailed August 29, 2008, pg. 13). For instance, amended claim 4 recites “applying an inverted smoothing factor to **a first weighting factor** to generate a second result, the first weighting factor corresponding to a first time period, **the first time period preceding the second time period**” (emphasis added). The Examiner cites col. 11, ll. 52-68, col. 12, ll. 35-68, and Figure 11 (*See* Office Action mailed August 29, 2008, pg. 13), but these sections do not disclose the amended aspect of the claim. Setting aside the Official Notice issue (which will be discussed below), these passages discuss aspects of smoothing a forecasting curve (*See* Landvater, col. 12, ll. 41-43) or a sales curve (*See* Landvater, col. 12, ll. 51-53), but not smoothing **a first weighting factor** [corresponding to a first time period preceding a second time period, the second time period corresponding to the weighting factor that is being calculated]. Accordingly, the Applicants do not believe that Landvater discloses the recited aspects detailing calculation of a weighting factor.

Regarding the Official Notice, the Examiner states that “official notice is taken that inverting (flipping, inversion, etc.) one or more factors (weights, variables, parameters, etc.) is a common statistical and mathematical technique” (*See* Office Action mailed August 29, 2008, pg. 5). The Applicants respectfully traverse the Official Notice for at least the following reasons. The Applicants have amended independent claim 4, and will discuss the Official Notice in relation to both the amended language of claim 4 and the non-amended language of claim 24.

First, the Applicants have reviewed the references listed on page 6 (“Crosswhite” U.S. 6,611,726, “Li” U.S. 7,028,000, and “Leonard” U.S. 2003/0200134), but none of them involve inverting weighting factors. While the Examiner notes aspects next to the listing, none of these notes allege that any of these references are directed to inverting weighting factors. Therefore, the assertion of Official Notice is not properly supported by documentary evidence as required by MPEP §2144.03. Second, the Official Notice asserted is not germane to the recited limitation. The limitations at issue are “applying an inverted smoothing factor to *a first weighting factor* to generate a second result, the first weighting factor corresponding to a first time period, *the first time period preceding the second time period*” and “applying an inverted smoothing factor to a previous weighting factor to generate a second result” (See claims 4 and 24, respectively). Asserting that the concept of inversion “is a common statistical and mathematical technique” does not render these claim limitations obvious. The Applicants do not claim to invent the concept of inversion. The aspect that should be at issue here is the particular application of inversion to a smoothing factor that is, in turn, applied to a weighting factor of a time period preceding the time period of the weighting factor being calculated (See claim 4) or a previous weighting factor (See claim 24). Isolating the terms of the claims in the manner presented in support of the alleged Official Notice is improper in this case.

Amended independent claim 15 recites:

means for calculating a *first* weighting factor of a first day of a first week;

means for calculating a *second* weighting factor of a second day of a second week based on the first weighting factor, the second week following the first week, the second day is a same Day of the Week as the first day;

means for calculating a *third* weighting factor of a third day of a third week based on the second weighting factor, the third week following the second week, the third day is the same Day of the Week as the first day and the second day;

(emphasis added). As similarly noted above, Landvater discloses “user-specified weights” used to combine “the extrapolated sales history with the original promotional forecast” (See Landvater, col. 19, ll. 60-62), but does not disclose the amended aspects reciting the particular basis of calculation. Landvater only states that the weights are “user-specified” and does not go

into further detail regarding how the user arrived at these values. If the Examiner rejects this amended claim, the Applicants respectfully request that the Examiner identify each of three elements that correspond to the first weighting factor, second weighting factor, and third weighting factor, respectively, as recited in the claim.

Amended independent claim 22 recites “calculating a weighting factor for a plurality of subdivisions of the time period based on an initialized weighting factor of an equal value for each of the plurality of subdivisions of the time period” (emphasis added). This limitation was transferred from claim 23 (now canceled). The Examiner contends that Landvater discloses this aspect at col. 19, ll. 37-68 and col. 20, ll. 1-20 (*See* Final Office Action mailed August 29, 2008, pg. 10). The Applicants respectfully disagree with this contention for at least the following reasons. First, Landvater’s lack of discussion regarding how its user-specified weights are calculated cannot disclose this limitation reciting a particular basis of calculation (*i.e.*, “based on an initialized weighting factor of an equal value for each of the plurality of subdivisions of the time period”). Second, Landvater’s user-specified weights are described in an example using sample values as follows. For a first day, an original forecast is weighted at 40% and an extrapolated sales history is weighted at 60% (*See* Landvater, col. 19, ll. 62-64), and for a second day, an original forecast is weighted at 20% and an extrapolated sales history is weighted at 80% (*See Id.* at col. 20, ll. 10-15). As the only example in the cited reference disclosing actual numbers, Landvater’s user-specified weights are not **equal values**. Rather, each of the aforementioned values is different from each other. Thus, Landvater does not disclose “an initialized weighting factor of an equal value for each of the plurality of subdivisions of the time period” (emphasis added).

Each of claims 2, 3, 5, 7, 8, 10-14, 16-21, 25, 26, and 28-32 depend from one of amended independent claims 1, 4, 15, and 22 and thus incorporate the respective limitations thereof. For at least the aforementioned reasons regarding the independent claims, Landvater does not describe each and every element of these dependent claims. Accordingly, it is respectfully requested that these rejections be withdrawn.

III. Rejection of Claims 6, 9, 24, and 27 Under 35 U.S.C. §103(a)

Claims 6, 9, 24, and 27 are rejected under 35 U.S.C. §103(a) as being obvious over Landvater. Claim 6 has been canceled; its rejection is moot. Claims 9, 24, and 27 each depend

from one of the independent claims and thus incorporate the respective limitations thereof. For at least the above reasons regarding the amended independent claims, Landvater does not teach or suggest all the limitations of these dependent claims. Accordingly, it is respectfully requested that these rejections be withdrawn.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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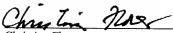
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CERTIFICATE OF TRANSMISSION

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Christine Flores Date